EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE NORTH RIVER INSURANCE COMPANY, :

Plaintiff, :

- against - : No. 90 Civ. 2518 (MJL) (JCF)

COLUMBIA CASUALTY COMPANY, :

Defendant. :

- x

PLAINTIFF'S MEMORANDUM
OF LAW IN SUPPORT OF ITS
MOTION FOR A PROTECTIVE ORDER

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THE NORTH RIVER INSURANCE COMPANY, :

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PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR A PROTECTIVE ORDER

Plaintiff The North River Insurance Company ("North River") respectfully submits this memorandum of law, together with the affidavit of Andrew S. Amer, sworn to on October 21, 1994 (the "Amer Aff."), and the affidavit of Steven A. Falk, sworn to on October 19, 1994 (the "Falk Aff."), in support of its motion for a protective order, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, based upon the attorney/client and work product privileges. The subject of this motion is a document request by defendant Columbia Casualty Company ("Columbia Casualty") seeking production of all communications between and among North River and its attorneys (including Simpson Thacher & Bartlett, counsel of record for North River in this action and in numerous other reinsurance matters) regarding an underlying arbitration that is the subject of this action.

Preliminary Statement

North River commenced this action to recover reinsurance proceeds due and owing from Columbia Casualty for asbestos-related defense costs incurred, and to be incurred, by North River on behalf of one of its insureds, Owens-Corning Fiberglas Corporation ("Owens-Corning"). North River was ordered to pay these defense costs under its excess liability policies issued to Owens-Corning as a result of a binding coverage arbitration between North River and Owens-Corning. Pursuant to the arbitration award, North River has paid to date over $300 million to Owens-Corning for asbestos-related defense costs. Columbia Casualty's share of this loss pursuant to its reinsurance contract issued to North River, which it has refused to pay, totals approximately $17 million.

This motion is necessitated by Columbia Casualty's efforts to obtain in discovery documents constituting privileged communications between North River and its attorneys and attorney work product generated during North River's two-year arbitration against Owens-Corning. Specifically, Columbia Casualty has requested production of "all documents between, among or with respect to, [North River] and its attorneys (including Simpson Thacher & Bartlett) regarding" the subject matter of the arbitration. The requested material comprises literally hundreds of documents reflecting legal advice rendered by North River's in-house counsel and outside coverage counsel regarding legal issues and strategy in the arbitration. North River has already produced to Columbia Casualty all non-privileged documents

relating to the arbitration, which consist of 42 boxes of material.

Although the requested documents fall within the attorney/client and work product privileges, Columbia Casualty nevertheless demands that the documents be produced because it contends that, as North River's reinsurer, it shared a "common interest" with North River in the outcome of the arbitration.[1/] Amer Aff. ¶ 11. Columbia Casualty's attempt to use the "common interest" doctrine as a sword to compel disclosure of privileged documents is completely misplaced, particularly where as here Columbia Casualty seeks to use the documents to **deny** North River $17 million in reinsurance proceeds. The common interest doctrine may only be invoked as a sword to invade the privilege where parties share a joint-client relationship.

This was the holding reached by the Honorable Alfred Wolin of the United States District Court for the District of New Jersey with respect to the identical universe of documents and the very same claim of privilege asserted by North River in a related reinsurance coverage action against another one of its reinsurers on the Owens-Corning risk. North River Insurance Co. v. Philadelphia Reinsurance Corporation, 797 F. Supp. 363 (D.N.J. 1992) ("Philadelphia Re"). In upholding North River's claim of privilege, the Philadelphia Re court ruled that a party is entitled to obtain privileged material based upon a "common

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1/ Given the substantial amount of documentation Columbia Casualty has reviewed relating to the arbitration, it cannot possibly demonstrate the "substantial need" required to overcome the work product privilege. Fed. R. Civ. P. 26(b)(3).

interest" only "when there has been a dual representation of both parties." 797 F. Supp. at 367-68. The court concluded on the same facts presented here that there was no dual representation because there was no attorney/client relationship between North River's coverage counsel and its reinsurer: ". . . North River retained its own counsel wholly independent from [the reinsurer], and [the reinsurer] had no input in any respect into the relationship between North River and its counsel, nor otherwise controlled that relationship" Id. at 367.

The same findings are equally applicable to Columbia Casualty, which played no role whatsoever in the retention of North River's coverage counsel or in any aspect of the relationship between North River and its coverage counsel. Accordingly, this Court should reach the same conclusion as the court in Philadelphia Re and uphold North River's assertion of privilege. Indeed, it would be a gross distortion of the law to compel North River to disclose privileged documents to Columbia Casualty based upon a "common interest" when, at the time of such disclosure, Columbia Casualty's interest would clearly be **adverse** to North River's interest.

Finally, Columbia Casualty has made a further request for the production of two specific internal memoranda reflecting advice of counsel. Columbia Casualty contends that it is entitled to obtain these two memoranda for the additional reason that North River waived any claim of privilege by providing the documents to CIGNA Reinsurance Company ("CIGNA Re"), another one of North River's reinsurers on the Owens-Corning risk. Columbia

Casualty's contention is without merit because at the time of North River's disclosure, CIGNA Re had not yet denied coverage and therefore shared a common interest with North River in the arbitration. Under these circumstances, the common interest doctrine permits North River to maintain the privilege and to shield these documents from its other reinsurers, including Columbia Casualty. It is well settled that the common interest doctrine, when applied as a shield to prevent disclosure rather than as a sword to compel disclosure, permits a party to disclose privileged communications to a third party with whom it shares a common interest without waiving the privilege with respect to others.

Accordingly, the Court should issue a protective order upholding North River's assertion of the attorney/client and work product privileges with respect to the requested documents, all of which reflect advice and opinions of North River's counsel.

Statement of Facts

A. Procedural History

This action was initiated by North River on December 29, 1989 against eight reinsurers, including Columbia Casualty, to recover reinsurance proceeds for asbestos-related defense costs due and owing under numerous reinsurance contracts. Columbia Casualty is the sole defendant remaining in the action. Amer Aff. ¶ 3.

In July 1991, this Court stayed all proceedings in the action pending the outcome of a Second Circuit appeal in a

related reinsurance coverage action entitled Unigard Security Ins. Co. v. North River Insurance Co., 762 F. Supp. 566 (S.D.N.Y. 1991), rev'd in part, aff'd in part, 4 F.3d 1049 (2d Cir. 1993). The appeal in Unigard was finally concluded in early 1994, and the Court lifted the stay by order dated August 12, 1994. Id. ¶ 4.

B. Nature of North River's Reinsurance Claim

North River issued to Owens-Corning several policies of excess liability insurance, including a policy bearing number XS-3672 ("XS-3672") and effective during the following three policy periods: July 9, 1974 to October 22, 1974; October 22, 1974 to October 22, 1975; and October 22, 1975 to October 22, 1976. Falk Aff. ¶ 4. XS-3672 afforded Owens-Corning a total of $85 million in coverage for all three policy periods. Id. ¶ 5.

In exchange for a share of the premium collected by North River from Owens-Corning for XS-3672, Columbia Casualty agreed to reinsure North River for a share of the losses arising under XS-3672 pursuant to the terms of a facultative certificate bearing number 2323400 (the "Columbia Casualty Certificate").[2/] Id. ¶ 6.

[2/] Reinsurance contracts are of two broad types: treaty reinsurance, by which the reinsurer reinsures an entire book of an insurer's business (such as all fire or casualty policies to whomever written), and facultative reinsurance, by which an insurance company "cedes" a proportion of a particular risk (and pays to the reinsurer a proportion of the premium) underwritten by a particular insurance policy. See Progressive Casualty Ins. Co. v. C.A. Reaseguradora Nacional de Venezuela, 991 F.2d 42, 45 n. 4 (2d Cir. 1993); Ostrager & Newman, Handbook on Insurance Coverage Disputes § 15.03[a] (6th Ed. 1993).

North River's reinsurance claim in this action arises out of losses incurred by North River under XS-3672 for asbestos-related defense costs. North River initially disputed that it owed any obligation to provide coverage to Owens-Corning under XS-3672 for defense costs, and agreed with Owens-Corning to submit this dispute for a binding determination through an alternate dispute resolution proceeding (the "ADR"). Amer Aff. ¶ 5.

The ADR was formally initiated by Owens-Corning in 1988. Id. ¶ 6. During the course of the ADR, North River sought and obtained legal advice from in-house attorneys and three law firms: Simpson Thacher & Bartlett (North River's counsel in this action) and the New Jersey law firms of Bumgardner Hardin & Ellis and McElroy Deutsch & Mulvaney. Columbia Casualty had no involvement whatsoever with North River's coverage counsel in the ADR. Columbia Casualty did not retain North River's coverage counsel, it did not pay any portion of North River's legal expenses associated with the ADR, and it did not otherwise participate in or exercise any control over the conduct of the ADR proceeding. Id. ¶ 7.

Following extensive discovery and a five-day hearing, a decision was issued in the ADR in July 1989 (the "ADR Decision"). Id. ¶ 8. Pursuant to the ADR Decision, North River was ordered to pay Owens-Corning's asbestos-related defense costs under XS-3672, and to do so in addition to policy limits. To date, North River has paid over $100 million for asbestos-related defense

costs under XS-3672 in addition to policy limits in accordance with the ADR Decision. Falk Aff. ¶¶ 7-8.

North River has, in turn, billed Columbia Casualty for its share of these defense costs under the Columbia Casualty Certificate. According to the most recent cumulative billing dated July 29, 1994, the total amount due and owing from Columbia Casualty for defense costs incurred under XS-3672 is $17,143,438. Id. ¶ 9.

C. Columbia Casualty's Document Demand

Shortly after the Court lifted the stay, Columbia Casualty propounded in a letter to counsel the following document request to North River:

> [W]e need all documents between, among or with respect to, Crum & Forster and its attorneys (including Simpson Thacher & Bartlett) regarding its dispute with Owens-Corning over North River's obligation to pay Owens-Corning's attorneys' fees.

Amer Aff. ¶ 9 and Exh. A. This request calls for the production of hundreds of documents reflecting legal advice rendered by North River's in-house and outside counsel concerning issues and strategy in the ADR. Id. ¶ 10.

In response, North River asserted that the requested documents are, by their very nature, protected from disclosure under the attorney/client and work product privileges. Id. ¶ 12 and Exh. B.

Following the conclusion of the September 29, 1994 status conference, Columbia Casualty made a further informal request for production of two specific documents: (i) a five-

page internal memorandum prepared by in-house attorney Bradford W. Rich, Esq. entitled "Legal Analysis Concerning Appeal of Owens-Corning ADR Decision" (the "Rich Memo"); and (ii) a January 29, 1988 two-page "memo to file" with attachments prepared by George B. Luteran, which reflects advice of counsel in connection with the ADR (the "Luteran Memo"). Id. ¶ 13. North River advised Columbia Casualty that it will not produce the Rich Memo or the Luteran Memo because they are privileged. Id. ¶ 14 and Exh. C.

Argument

THE COURT SHOULD ISSUE A PROTECTIVE ORDER BECAUSE THE DOCUMENTS SOUGHT BY COLUMBIA CASUALTY ARE PROTECTED FROM DISCLOSURE BY THE ATTORNEY/CLIENT AND WORK PRODUCT PRIVILEGES

Columbia Casualty demands that North River produce documents which, by Columbia Casualty's own description in its request, are subject to the attorney/client and work product privileges. Columbia Casualty's position that the documents are not privileged as to North River's reinsurers based upon a "common interest" is without merit. Columbia Casualty's attempt to invoke the "common interest" doctrine is entirely misconceived.

Under settled law, the common interest doctrine may not be invoked by a party seeking discovery to abrogate a claimed privilege unless that party shared an attorney/client relationship with the party asserting the privilege. Here, Columbia Casualty did not share an attorney/client relationship with North River. Since the requested documents are clearly

privileged and there was no dual representation of North River and Columbia Casualty in the ADR, Columbia Casualty's challenge to North River's assertion of privilege should be rejected.

A. The Requested Material Falls Within the Classic Definition of Privileged Documents

Columbia Casualty has requested production of "all documents between, among or with respect to, Crum & Forster and its attorneys (including Simpson Thacher & Bartlett) regarding its dispute with Owens-Corning over North River's obligation to pay Owens-Corning's attorneys' fees." Amer Aff. ¶ 9 and Exh A. It is well settled that such documents are clearly privileged as a matter of New York law.[3/] See, e.g., Spectrum Sys. Int'l Corp. v. Chemical Bank, 78 N.Y.2d 371, 377-78, 575 N.Y.S.2d 809, 813-14, 581 N.E.2d 1055, 1059-60 (1991) (communications between a client and his counsel are privileged and may not be discovered); Corcoran v. Peat, Marwick, Mitchell & Co., 151 A.D. 2d 443, 445, 542 N.Y.S.2d 642, 643 (1st Dep't 1989) (documents containing the mental impressions of an attorney are protected from disclosure under the work product doctrine).

Thus, the issue presented for the Court is whether North River has somehow waived the privilege. For the reasons that follow, there has been no waiver.

3/ In a diversity action such as this, the law of the forum state governs the applicability of the attorney/client privilege. Fine v. Facet Aerospace Prods. Co., 133 F.R.D. 439, 443 (S.D.N.Y. 1990) (Francis, M. J.); Bower v. Weisman, 669 F. Supp. 602, 603 (S.D.N.Y. 1987).

B. The Common Interest Doctrine Does Not Apply To Effect A Waiver Of North River's Privilege Because Columbia Casualty Had No Attorney/Client Relationship With Counsel Handling The ADR

It is basic to the understanding of the common interest doctrine that the doctrine may be applied in two distinct contexts. The common interest doctrine may be invoked as a **shield** to protect documents from disclosure or as a **sword** to compel disclosure. Importantly, the applicability of the doctrine differs depending on the manner in which it is invoked.

When the doctrine is invoked as a shield by a party who holds the privilege, there is no waiver where that party has disclosed the privileged communications to a third party with whom it shared a common interest in the outcome of the subject of the representation at the time of the disclosure. See Great American Surplus Lines Ins. Co. v. Ace Oil Co., 120 F.R.D. 533, 537-38 (E.D. Cal. 1988) (applying the common interest doctrine as a shield to protect against disclosure to underlying insured those documents which had been disclosed by the insurer to its reinsurer, which, at the time of the disclosure, was united in interest with the insurer); see also U.S. v. Zolin, 809 F.2d 1411, 1417 (9th Cir. 1987) (applying the common interest doctrine as a shield to preclude discovery), aff'd in part, vacated n part on other grounds, 491 U.S. 554 (1989); Davis v. Costa-Gavras, 580 F. Supp. 1082, 1098-99 (S.D.N.Y. 1984) (same); SCM Corp. v. Xerox Corp., 70 F.R.D. 508, 512-14 (D. Conn.) (same), appeal dismissed, 534 F.2d 1031 (2d Cir. 1976).

In contrast, when the common interest doctrine is invoked as a sword by a party seeking to compel disclosure of

privileged documents, there is a waiver only where that party was a joint client of the attorney whose communications or work product are being sought.[4/] See, e.g., Car & Gen. Ins. Corp. v. Goldstein, 179 F. Supp. 888, 891 (S.D.N.Y. 1959), aff'd, 277 F.2d 162 (2d Cir. 1960); Liberty Mut. Ins. Co. v. Engels, 41 Misc. 2d 49, 50-51, 244 N.Y.S.2d 983, 985-86 (Sup. Ct. Kings Co. 1963), aff'd, 21 A.D.2d 808, 250 N.Y.S.2d 851 (2d Dep't 1964). This is the manner in which Columbia Casualty seeks to invoke the common interest doctrine here.

The classic statement of the common interest doctrine applied as a sword to compel disclosure is as follows:

> [A] communication by A to X as the common attorney of A and B, who afterwards become party opponents, is not privileged as between A and B since there was no secrecy between them at the time of communication.

J. Wigmore on Evidence § 2312 at 605-06; North River Insurance Co. v. Philadelphia Reinsurance Corporation, 797 F. Supp. 363, 366 (D.N.J. 1992) (Philadelphia Re") (citing Wigmore).

The critical issue in determining whether the common interest doctrine may be applied as a sword is whether the same counsel represented both parties simultaneously. See, e.g., Philadelphia Re, 797 F. Supp. at 367-68 (holding waiver may be found under the common interest doctrine only where "there has

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4/ Some courts refer to the common interest doctrine applied in this manner as the "joint client" doctrine. See, e.g., In re Colocotoronis Tanker Sec. Litig., 449 F. Supp. 828, 830 (S.D.N.Y. 1978); NL Indus., Inc. v. Commercial Union Ins. Co., 144 F.R.D. 225, 230 (D.N.J. 1992) (referring to the "joint attorney" doctrine); Rockwell Int'l Corp. v. Superior Court, 32 Cal. Rptr. 2d 153, 160 (Cal. Ct. App. 1994); HM Holdings, Inc. v. Lumbermens Mut. Cas. Co., 612 A.2d 1338, 1341 (N.J. Super. Ct. App. Div. 1992).

been a dual representation of both parties, or the privilege has otherwise been waived"); Remington Arms Co. v. Liberty Mutual Ins. Co., 142 F.R.D. 408, 417-18 (D. Del. 1992); Liberty Mutual, 41 Misc. 2d at 50-51, 244 N.Y.S.2d at 985-86; U.S. Fire Ins. Co. v. Phoenix Assurance Co., No. 7712/91, slip op. at 7 (N.Y. Sup. Ct. N.Y. Co. Aug. 18, 1992), aff'd, 193 A.D.2d 559, 598 N.Y.S.2d 938 (1st Dep't 1993).[5/] But see Waste Management, Inc. v. International Surplus Lines Ins. Co., 579 N.E.2d 322, 328-29 (Ill. 1991) (applying the doctrine as a sword where an insured's defense counsel, "though neither retained by nor in direct communication with the insurer, acts for the mutual benefit of both the insured and the insurer").[6/]

[5/] A copy of the unreported decision in U.S. Fire is annexed at Tab 1.

[6/] The aberrant decision in Waste Management has been harshly criticized by many courts, and the majority of courts to address the application of the common interest doctrine, including this Court, have refused to follow its holding. See International Ins. Co. v. Newmont Mining Corp., 800 F. Supp. 1195, 1196-97 (S.D.N.Y. 1992) (concluding that the Waste Management decision has "no force"); Vermont Gas Sys., Inc. v. U.S. Fidelity & Guar. Co., 151 F.R.D. 268, 277 (D. Vt. 1993); NL Indus., Inc. v. Commercial Union Ins. Co., 144 F.R.D. 225, 231-32 (D.N.J. 1992); Pittston Co. v. Allianz Ins. Co., 143 F.R.D. 66, 69-70 (D.N.J. 1992) (noting that it would "distort" the doctrine to permit production of privileged communications between the insured and its defense counsel to insurers who refused to take part in the litigation); Philadelphia Re, 797 F. Supp. at 367 (rejecting Waste Management as "unduly broad"); Remington Arms, 142 F.R.D. at 417-18 (describing the Waste Management holding as a "strange theory" based on a "legal fiction"); Bituminous Casualty Corp. v. Tonka Corp., 140 F.R.D. 381, 386-87 (D. Minn. 1992) (characterizing the Waste Management's expansion of the common interest doctrine as "unsound"); Rockwell Int'l Corp. v. Superior Court, 32 Cal. Rptr. 2d 153, 160 (Cal. Ct. App. 1994) (strongly criticizing the Waste Management decision); HM Holdings, Inc. v. Lumbermens Mut. Cas. Co., 612 A.2d 1338, 1341-42 (N.J. Super. Ct. App. Div. 1992).

The decision in Philadelphia Re is particularly instructive because it involved the same underlying factual circumstances, the same universe of documents, the same legal issues and the same privilege claim involved in this case. In Philadelphia Re, the court held that another one of North River's reinsurers on the Owens-Corning risk could not invoke the common interest doctrine as a sword to compel disclosure of the documents requested by Columbia Casualty absent a showing that it was a joint client of North River's ADR counsel:

> [T]he common interest doctrine is completely unlashed from its moorings in traditional privilege law when it is held broadly to apply in contexts other than when there is dual representation. . . . As a matter of general privilege law, there is no automatic waiver of the attorney/client privilege merely because an insured and its insurer have a "common interest" in the outcome of a particular issue. That waiver may be found only when there has been a dual representation of both parties, or the privilege has otherwise been waived . . . .

797 F. Supp. at 367-68 (emphasis added).

The court held in Philadelphia Re that there was no waiver of the privilege "because North River retained its own counsel wholly independent from [the reinsurer], and [the reinsurer] had no input in any respect into the relationship between North River and its counsel, nor otherwise controlled that relationship." Id. at 367; accord Great American, 120 F.R.D. at 537 (holding that a reinsurer is not a joint client with its reinsured when the reinsurer did not consult either directly or indirectly with the reinsured's underlying coverage counsel); U.S. Fire, slip op. at 8 (holding that the reinsurer

and reinsured were not joint clients so that the reinsured's communications with its underlying coverage counsel remained privileged and undiscoverable).

Similarly, in U.S. Fire, the court refused to engage in the "legal fiction" that the reinsurer and reinsured should be deemed to have a common lawyer with respect to the underlying coverage claim, requiring instead that they must in fact be joint clients of the same coverage counsel in order for the reinsurer to invoke the common interest doctrine as a sword. Slip op. at 7-8 (noting that although the reinsurer may have benefitted from the reinsured's legal representation in the underlying coverage action, the reinsurer was not responsible for the conduct of that litigation).

Here, as in Philadelphia Re and U.S. Fire, there is no joint client relationship with North River's ADR counsel. Columbia Casualty can point to no evidence establishing that it had any involvement with North River's coverage counsel in the ADR. Columbia Casualty did not retain North River's coverage counsel, it did not pay any portion of North River's legal expenses associated with the ADR, and it did not otherwise exercise any control over North River's conduct in the ADR proceeding. In short, Columbia Casualty was not a joint client of North River's coverage counsel.

Columbia Casualty ignores the dual representation requirement, contending that the common interest doctrine somehow requires North River to disclose privileged documents at the present time, when its interests are clearly adverse to those of

North River. Columbia Casualty's position stands the common interest doctrine on its head. See Pittston Co. v. Allianz Ins. Co., 143 F.R.D. 66, 69-70 (D.N.J. 1992) (noting that it would "distort" the doctrine to permit production of privileged communications between the insured and its defense counsel to insurers who refused to take part in the litigation)

Since Columbia Casualty did not have a joint client relationship with North River's ADR counsel, Columbia Casualty may not invoke the common interest doctrine to compel disclosure of privileged ADR documents. Philadelphia Re, 797 F. Supp. at 366-68.

C. North River's Prior Disclosure To CIGNA Re Of The Rich Memo And The Luteran Memo Did Not Waive Any Privilege Since CIGNA Re Shared A Common Interest With North River At The Time Of The Disclosure

Columbia Casualty contends that North River's disclosure of the Rich Memo and the Luteran Memo to CIGNA Re serves as an additional basis for finding waiver. Again, Columbia Casualty's position is based upon a fundamental misunderstanding of the common interest doctrine.

As discussed above, a party may invoke the common interest doctrine as a shield against waiver where it has disclosed privileged documents to a third party with whom it shared a common interest at the time of the disclosure. See supra at p. 11.

North River disclosed the Luteran Memo to CIGNA Re during a claims audit conducted by CIGNA Re in October 1990 -- before CIGNA Re disclaimed coverage and, therefore, when it

shared a common interest with North River in the underlying claims -- for the purpose of assisting CIGNA Re in evaluating North River's reinsurance bills. Falk Aff. ¶¶ 12-14. North River disclosed the Rich Memo to CIGNA Re on or about March 18, 1991 -- also before CIGNA Re disclaimed coverage -- in response to a request from CIGNA Re for any legal analyses concerning whether to appeal from the ADR Decision. Id. ¶¶ 15-16. Again, North River's disclosure was for the purpose of assisting CIGNA Re in evaluating North River's bills. Id. ¶ 15. CIGNA Re did not affirmatively deny North River's reinsurance claim until June 1991, after disclosure of both memoranda. Id. ¶ 17.

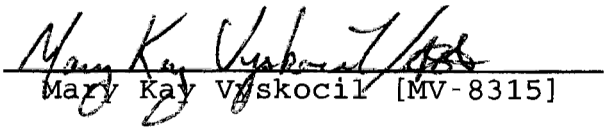
Since, at the time of the disclosures, CIGNA Re had not yet denied coverage, CIGNA Re shared a common interest with North River with regard to the ADR. Accordingly, North River's disclosure to CIGNA Re did not waive any privilege as to Columbia Casualty with respect to either memoranda. See Great American, 120 F.R.D. at 537-38 (applying the common interest doctrine as a shield to protect against disclosure to underlying insured those documents which had been disclosed by the insurer to its reinsurer, which, at the time of the disclosure, was united in interest with the insurer); see also Zolin, 809 F.2d at 1417 (applying the common interest doctrine as a shield to preclude discovery); SCM Corp., 70 F.R.D. at 512-14 (same); Costa-Gavras, 580 F. Supp. at 1098-99 (same).

Conclusion

For all the foregoing reasons, North River respectfully requests that the Court grant its motion for a protective order in all respects, along with such other relief as the Court deems just and proper.

Dated: New York, New York
October 21, 1994

SIMPSON THACHER & BARTLETT
(a partnership which includes
professional corporations)

By: 
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Mary Kay Vyskocil,
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Patricia A. Diaz,

Of Counsel.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that true and correct copies of (1) plaintiff The North River Insurance Company's Notice of Motion for a Protective Order, (2) the Affidavit of Andrew S. Amer, sworn to on October 21, 1994, (3) the Affidavit of Steven A. Falk, sworn to on October 19, 1994, and (4) Plaintiff's Memorandum of Law in Support of Its Motion for a Protective Order were served by Federal Express on October 21, 1994 upon counsel for defendant Columbia Casualty Company: Thomas R. Esposito, Esq., Ford, Marrin, Esposito & Witmeyer, Wall Street Plaza, New York, New York 10005.

Dated: New York, New York
October 21, 1994

Patricia Ann Diaz